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Letter dated 15 June 2005 from the chargé d'affaires a.i. of the Permanent Mission of Burkina Faso to the United Nations addressed to the President of the General Assembly

Acting on instructions from the Government of Burkina Faso, I have the honour to forward herewith, a copy of the report of the national seminar on the implementation of the universal instruments to combat terrorism, transnational organized crime and corruption (see annex).

I would be grateful if you could have the report circulated to Member States as an official document of the General Assembly under agenda items 96 and 97.

(*Signed*) François **Oubida**
Chargé d'affaires a.i.

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Annex to the letter dated 15 June from the chargé d'affaires a.i. of the Permanent Mission of Burkina Faso to the United Nations addressed to the President of the General Assembly

Report of the national seminar on the implementation of the universal instruments to combat terrorism, transnational organized crime and corruption

Introduction

A national workshop on the implementation of universal instruments to combat terrorism, transnational organized crime, terrorism and corruption was held in the conference hall of the Ministry of Foreign Affairs and Regional Cooperation from 5 to 7 January 2005. The seminar was organized by the Ministry of Justice with the cooperation of the Ministry of Foreign Affairs and Regional Cooperation and with technical and financial support from the United Nations Office on Drugs and Crime (UNODC). There were about 40 participants, representing the various ministerial departments concerned with such issues. The report on the seminar is divided into the following sections:

1. Seminar objectives
2. Presentation of the Organizing Committee
3. Opening Ceremony
4. Proceedings
5. Workshop outcomes
6. Difficulties, suggestions and prospects

I. Objectives

General objective

This workshop, conducted within the context of the review of the current criminal procedures code was aimed at promoting ownership, by national experts, of those universal instruments adopted to combat transnational organized crime, corruption and terrorism which Burkina Faso had ratified or was in the process of ratifying.

Specific objectives

(a) To assist Burkina Faso in the implementation of conventions against transnational organized crime, corruption and of universal instruments to combat terrorism;

(b) To train and educate national experts about the aforementioned instruments and identify with them those provisions which must be incorporated;

(c) To provide appropriate assistance in the incorporation of instruments to combat transnational organized crime, corruption and terrorism in the penal code and criminal procedure of Burkina Faso;

(d) To train magistrates and security forces such as the police, gendarmerie and customs officers about the international cooperation mechanisms available under those instruments.

II. Organizing Committee

The seminar was jointly organized by UNODC and Burkina Faso. National organization was mainly the responsibility of the Ministry of Justice (through the Office of its Director in charge of legislation and documentation) working with help from the Ministry of Foreign Affairs and Regional Cooperation, which hosted the meeting.

More specifically, the Organizing Committee was jointly coordinated by Cheick D. **Ouedraogo**, First President of the Court of Appeal and D. Etienne **Ouoba**, Director in charge of legislation and documentation.

Other members of the Committee were:

- Ms. Wendyam **Zare** née **Kabore** and Ms. Adelaide **Dembele**, members of DLD;
- Mr. Tounsida Clément **Sawadogo**, member of DLD;
- Mr. Boureima **Kalaga**, Mr. André **Ouedraogo** and Mr. Batangnon **Lamine**, members of DLD; and
- Mr. Issouffou **Ouedraogo**, Director of communications and the ministerial press, and Mr. Hamidou **Simpore**, Chief of Protocol in the Ministry of Justice.

III. Opening ceremony

The opening ceremony was presided over by the Ministry of Justice and was graced by the presence of many eminent persons such as:

- holders of high national office;
- the honourable ministers for foreign affairs and regional cooperation, of national security, labour, employment and youth, of budget and finance and for the promotion of human rights;
- the head of the national security agency;
- the inspector-general of police;
- the chairman of the anti-corruption authority; and
- many others.

Three statements were made at the opening ceremony:

- welcoming remarks by the Director in charge of legislation and documentation;
- a statement by Mr. Jean-Paul Laborde, representative of UNODC; and
- the opening statement by the Minister of Justice.

In his welcoming remarks, Mr Etienne **Ouoba**, Director in charge of legislation and documentation at the Ministry of Justice, stressed the importance of implementing the universal instruments against terrorism, transnational organized crime and corruption.

The representative of UNODC highlighted the pioneering role of the seminar which offered participants the opportunity, on the one hand, to receive appropriate information on the universal instruments to combat terrorism, transnational organized crime and corruption and bring the legislation of Burkina Faso into line with those instruments, and, on the other hand, to deepen the international cooperation mechanisms available to them for combating crime. His keen appreciation went to the authorities of Burkina Faso for their warm hospitality and for their quality organization of the seminar.

In his opening statement, Mr. Boureima **Badini**, Minister of Justice, said that its geographical location made Burkina Faso a transit point for criminal networks. He therefore welcomed the current efforts being made to institute cooperation between Burkina Faso and UNODC. The country had done well to adopt global benchmarks in such instruments as:

- the poverty reduction strategy framework;
- the anti-corruption coordination authority; and
- the plan of action for combating child trafficking.

To combat effectively the scourges of terrorism, transnational organized crime and corruption, he stressed the importance of the seminar which would enable Burkina Faso to institute the necessary legal framework for incorporating the global provisions into the law of Burkina Faso as well as to train its magistrates and law enforcement agencies.

IV. Proceedings

In substance, the national seminar on the implementation of universal instruments to combat transnational organized crime, terrorism and corruption provided a forum for addressing the following themes:

Overview of the instruments to combat transnational organized crime and terrorism

The first presentation enabled participants to focus specifically on the universal instruments to combat terrorism and transnational organized crime and the United Nations Convention against Transnational Organized Crime and its three protocols dealing with trafficking in persons, smuggling of migrants and the illicit manufacture of and trafficking in firearms, which Burkina Faso has ratified.

In terms of combating terrorism, the experts presented the 12 universal instruments for combating terrorism and some resolutions.

A highly fruitful exchange of views ensued at the end of which participants made comments which were subsequently incorporated into the recommendations and plan of action.

Techniques for implementing the universal instruments against terrorism, the United Nations Convention against Transnational Organized Crime and its protocols

The presentation of these techniques jointly by the three experts was aimed, on the one hand, at highlighting the criminalization provisions contained in the aforementioned instruments and, on the other, at formulating — based on analysis of

relevant positive law in Burkina Faso — the measures to be taken as needed to incorporate them in legislation.

Two preliminary comments were made to introduce this module:

- the first spelled out the substance of the document;
- the second focused on modalities for incorporation — namely, amendment of the penal code or drafting of stand-alone legislation — which was left to the discretion of the States.

It was also noted that these techniques could apply not only to the provisions relating to criminalization but to all the provisions of a convention. The presentation focused on the criminalization in the two types of universal instruments. In the counter-terrorism instruments, criminalization was of the association type provided for in the Convention on the Suppression of the Financing of Terrorism. Regarding the Convention against Transnational Organized Crime and its protocols, the various types of criminalization (corruption, money-laundering and participation in organized criminal gangs) were considered with the exception of the obstruction of justice (article 23 of the Convention against Transnational Organized Crime).

Criminal association

This offence which is to be found in the Convention on the Suppression of the Financing of Terrorism was considered in order to study how to implement the provisions concerning the criminalization of offences relating to terrorism. It became clear that the universal instruments do not require the criminalization of terrorism itself but simply require the criminalization of certain serious acts regardless of their purpose or motive.

According to Burkina Faso's national constitution, which provides in article 151, that conventions (from their time of ratification) shall take precedence over domestic law, certain provisions of the conventions on terrorism could be directly applied but, in practice, reference is not always made to the Convention, hence the importance of enforcement.

Consideration of criminalization in the Convention on the Suppression of the Financing of Terrorism falls within this context. The criminalization provided for in article 2 specifies the constituent elements as well as the quality of perpetrators or accomplices. Notably, the financing of terrorism which remains an offence before the act is committed is deemed to have occurred once a constituent element exists and the mere initiation of action is sufficient to make it an offence. Accordingly, article 2, paragraph 3, stipulates that the funds need not actually be used to commit the intended offence.

Regarding persons who may be prosecuted, article 2, 5 stipulates that anyone commits an offence if that person:

- participates as an accomplice in one of the offences listed above;
- organizes or directs others to commit one of these offences;
- contributes to the commission of such offences by a group of persons acting with a common purpose; such contribution can be made either with the aim of furthering the criminal activity or criminal purpose of the group; or in the knowledge of the criminal intention of the group.

Also guilty of such crimes within the meaning of the Convention are any persons who attempt to commit one of the offences listed above.

An analysis of the laws of Burkina Faso shows that the financing of terrorism is not considered an offence. Accordingly, it has been recommended for incorporation using the model proposed by UNODC.

Criminalization in the Convention against Transnational Organized Crime and its Protocols

The idea was principally to study how to implement the criminalization provisions relating to laundering the proceeds of crime, corruption and participation in organized criminal gangs.

Regarding money-laundering, the law is silent on criminalization although under national drug laws, it is considered an offence to launder drug money and (a uniform law on money-laundering is currently being drafted). In terms of criminalization, the Convention against Transnational Organized Crime proposes four offences:

- conversion or transfer of the proceeds of crime (article 6.1 (a) (i));
- concealment or disguise of the proceeds of crime (article 6.1 (a) (ii));
- acquisition, possession or use of the proceeds of crime (article 6.1 (b) (i)); and
- participation in association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the aforementioned offences (article 6.1 (b) (ii)).

The criminalization of corruption as provided for in Article 8 of the Palermo Convention, is addressed in articles 156 and following of the penal code. However, these provisions are not sufficient for the full criminalization of corruption as required under the Convention and should be supplemented by the criminalization of active corruption by public officials as provided for in the Convention and passive corruption of public officials through direct or indirect solicitation of an undue advantage for themselves or for any other person or entity.

Regarding participation in organized criminal groups which, according to the laws of Burkina Faso, is likened to association with lawbreakers and assistance to criminals, it was underscored that the relevant provisions are in conformity with Article 5 of the Convention but they need to be complemented by other provisions aimed at criminalizing:

- agreeing with one or more other persons;
- knowledge by the offender of the criminal nature of the group or at least one of its criminal activities or objectives;
- introduction of the purpose relating directly or indirectly to the obtaining of a financial or other material benefit. Such purposes, it should be noted, makes it possible to establish a link between participation in an organized criminal group and terrorism.

The discussions which followed focused on such issues as proof of terrorist intention in the financing of terrorism, the distinction between political crimes and terrorist acts, the problem of counter-terrorism and corruption in developing

countries, the harmonization of the implementation of universal instruments and the process of drafting a uniform law on money-laundering in Burkina Faso.

International cooperation under universal instruments for combating transnational organized crime and terrorism

This topic, whose purpose was to identify the international legal cooperation instruments that comply with the conventions against terrorism and transnational organized crime, addressed three main points, followed by practical exercises:

- forms of international cooperation under the United Nations Convention against Transnational Organized Crime;
- Burkina Faso's bilateral and multilateral obligations to combat organized crime and terrorism;
- mutual legal assistance.

1. Forms of international cooperation under the United Nations Convention against Transnational Organized Crime

This point covered the challenges to cooperation of eliminating possible havens for criminal groups, and of reducing the gap between the abilities of such groups and the operational capacities of the authorities dealing with organized crime and terrorism.

International cooperation was reviewed for its adherence to the provisions of the Convention. The review addressed the matter of legal cooperation, focusing mainly on the elements of cooperation and the principles underlying extradition treaties.

According to the provisions of the Convention and related agreements, judicial cooperation involves the following elements:

- extradition;
- mutual legal assistance;
- police cooperation;
- transfer of prosecutions;
- transfer of convicted persons;
- witness protection;
- joint investigations;
- special investigation techniques;
- exchange of financial information;
- reconciling conflicts of jurisdiction.

The principles underlying extradition treaties are as follows:

- the double incrimination principle;
- the obligation to extradite for offences provided under the relevant treaty;
- the obligation to define the type of offences that may result in extradition;

– mandatory grounds for refusing to extradite;

– optional grounds for refusing to extradite;

– communication channels and required documents;

– cases of simplified extradition;

– certification and authentication of documents;

– delivery of the extradited individual;

– the rule of specialty;

– the aut dedere aut judicare principle;

– jurisdiction of States.

Following this introduction, the various cooperation methods were discussed in greater depth.

2. Burkina Faso's obligations to combat transnational organized crime and terrorism

These obligations, which involve combating crime, terrorism and corruption at the regional and subregional levels, were reviewed in four basic areas:

(i) Multilateral obligations for combating terrorism;

(ii) Multilateral obligations for combating corruption;

(iii) Other multilateral obligations for combating transnational organized crime;

(iv) Burkina Faso's bilateral commitments.

In the area of terrorism, the main regional conventions to which Burkina Faso is a party are the Convention of the Organization of African States on the Prevention and Combating of Terrorism (OAU Convention) and the Convention of the Organization of the Islamic Conference on Combating International Terrorism (OIC Convention). The first was adopted during the thirty-fifth ordinary session of the Assembly of Heads of State and Government held at Algiers from 12 to 14 July 1999. Once it entered into force, it was ratified by Burkina Faso on 17 October 2002. Its purpose is combating terrorism in all its forms and manifestations. Accordingly, the OAU Convention calls on States to:

– review their national laws and establish criminal offences for terrorist acts as defined in its article 1, and to make such acts punishable;

– notify the Secretary-General of the OAU of the legislative measures they have taken;

– refrain from any acts aimed at organizing, supporting, financing, committing or inciting to commit terrorist acts or providing havens for terrorists, directly or indirectly.

The OIC Convention of 28 June 1999, signed by Burkina Faso on 16 April 2002, is the most recent of these instruments, and defines terrorism as any crime executed, started or participated in to realize a terrorist objective in any of the Contracting States or against its nationals, assets or interests or foreign facilities and

nationals residing in its territory punishable by its internal law. Struggles against foreign occupation, colonialism, aggression or hegemony, or struggles for liberation or self-determination are excluded from this definition of terrorist crimes.

The OIC Convention aims to combat international terrorism in all its forms and manifestations, including State terrorism against States and peoples, to promote cooperation among States for combating terrorist crimes that threaten the security and stability of the Islamic States and endanger their vital interests, and to strengthen cooperation, peace and understanding among members.

Accordingly, the OIC Convention requires States to undertake obligations with a view to preventing and combating the scourge of terrorism, and ensuring on their territories the punishment of such crimes as well as cooperation in the areas of training, education, security, mutual legal assistance and sharing of information on terrorist offences, on the authors of such offences and on their activities.

Burkina Faso is a party to two legally binding instruments for combating corruption on the regional and sub-regional levels: the African Union Convention on Preventing and Combating Terrorism of 11 July 2003 (Maputo Convention) and the ECOWAS Protocol on the Fight against Corruption, adopted at Dakar on 21 December 2001.

The Maputo Convention, adopted at the Second Ordinary Session of the African Union, has five major objectives:

- promoting and strengthening the development of mechanisms for preventing, detecting, punishing and eradicating corruption and related offences;
- promoting, facilitating and regulating cooperation among States parties;
- coordinating and harmonizing the policies and legislation of States for the purposes of prevention, detection, punishment and eradication of corruption on the continent;
- promoting socio-economic development; and
- fostering transparency and accountability in the management of public affairs.

The obligations of States under the Maputo Convention relate not only to laundering the proceeds of corruption, illicit enrichment and the funding of political parties, but also to cooperation and mutual legal assistance in combating corruption. In addition, the Convention calls on States parties to designate, at the time that they deposit the instrument of ratification, the national authority or agency which will be responsible for handling questions concerning the offences described therein, and to establish a follow-up mechanism consisting of an advisory board of 11 members.

The ECOWAS Protocol, not yet in force, has three objectives:

- promoting and strengthening, in each State party, the creation of effective mechanisms for preventing, punishing and eradicating corruption;
- bolstering and energizing the cooperation between States parties with a view to improving the efficiency of measures for combating corruption; and
- promoting the harmonization and coordination of national laws and policies for combating corruption.

In addition to articles 6, 7 and 12, which regulate the matter of territorial jurisdiction of States in the area of corruption, the ECOWAS Protocol provides for three levels of obligation: the adoption of preventive measures, criminalization by the legislature of corruption-related offences (illicit enrichment, laundering the proceeds of corruption and related offences, and acts of corruption involving foreign civil servants); the adoption of punishments, disincentives and protection measures, and cooperation in providing mutual legal assistance.

Burkina Faso's other multilateral and bilateral obligations that play a role in combating corruption, transnational organized crime and terrorism were also reviewed. Such obligations are found in treaty law (in particular, at the bilateral level) and in declaratory instruments. At the regional level, the essential undertakings are:

- the convention on assistance and cooperation in security matters between the Council of the Entente member States, signed at Kara;
- the ECOWAS Convention on Mutual Assistance in Criminal Matters (A/P1/7/92);
- the ECOWAS Convention on Extradition (A/P1/8/94);
- the Moratorium on the Importation, Exportation and Manufacture of Small Arms and Light Weapons in West Africa, of 31 October 1998, which established the Programme for Coordination and Assistance for Security and Development (PCASED);
- the Bamako Declaration on an African Common Position on the Illicit Proliferation, Circulation and Trafficking of Small Arms and Light Weapons.

The bilateral instruments concluded by Burkina Faso relate not only to cooperation and mutual legal assistance (with France and Mali) but also to cooperation in combating the traffic in children (an agreement with Mali and a draft agreement currently being negotiated with Côte d'Ivoire).

Use of international cooperation mechanisms in daily life

Participants took part in exercises involving the use of international cooperation mechanisms in combating transnational organized crime, terrorism and corruption. These exercises provided the experts with important skills for using the provisions of instruments, and allowed the main actors in the area of international cooperation to share their experiences.

Following the exercise session, participants reviewed their draft action plans and recommendations for the implementation of the instruments relevant to Burkina Faso (see annexed documents).

V. Workshop outcomes

In addition to providing training for national experts, the seminar resulted in the adoption of a strong recommendation and a plan of action.

The **recommendation** covers the following main points:

– the formulation and dissemination of a training manual on international cooperation in combating terrorism for the use of specialists working in the field of criminal justice;

– establishment by competent national authorities of bilateral, regional and international cooperation modalities for combating terrorism, transnational organized crime and corruption, through agreements between States and creation of adequate mechanisms to that end and enhancement of dialogue, including meetings for sharing experiences and information on the bilateral, subregional, regional and international levels and specialized seminars for strengthening means of cooperation between the authorities concerned;

– full support by the competent national authorities for victims of terrorism, and promotion of international efforts aimed at acquiring material and social assistance for such victims;

– active participation by Burkina Faso in the Eleventh United Nations Congress on Crime Prevention and Criminal Justice, to be held in Bangkok from 18 to 25 April 2005, for the purpose of presenting the reforms undertaken and sharing views and experiences;

– a delegation from Burkina Faso to the upcoming session of the Conference of the Parties to the United Nations Convention against Transnational Organized Crime, to be held in Vienna from 10 to 21 October 2005.

The seminar urged:

– the Minister for Foreign Affairs and Regional Cooperation of Burkina Faso to present this statement to the United Nations General Assembly at its fifty-ninth session,

– UNODC to organize a subregional seminar on mutual legal assistance, necessary for effectively combating transnational organized crime;

– implementation of the plan of action, since Burkina Faso has already ratified the universal instruments against terrorism and transnational crime, and is about to ratify the United Nations Convention against Corruption.

I. Universal Instruments against terrorism

Incorporation into law

Pilot Ministry: Ministry of Justice

Completion date: first trimester 2006

Establishment of a schedule of work: late April 2005

Provision of documents and opinions by the technical ministries within the scheduled time frame;

provision of remote or on-site technical assistance by UNODC at the request of the competent national authorities;

meeting of the codification commission or of a group able to give views on the proposals put forward;

delivery of the final document by the pilot ministries to the competent national authorities.

II. United Nations Convention against Transnational Organized Crime and its Protocols

Incorporation into law

Pilot authority: Ministry of Justice

Completion date: first trimester 2006

Establishment of a schedule of work: late April 2005

Provision of documents and opinions by the technical ministries within the scheduled time frame;

provision of remote or on-site technical assistance by UNODC at the request of the competent national authorities;

meeting of the codification commission or of a group able to give views on the proposals put forward;

delivery of the final document by the pilot ministries to the competent national authorities.

III. United Nations Convention against Corruption

1. Continuation and completion of the ratification procedure

Pilot ministry: Ministry of Foreign Affairs and Regional Cooperation

Continuation of the parliamentary procedure

Completion date: late April 2005

Information from UNODC

2. Procedure for deposit with the United Nations Secretary-General

Pilot ministry: Ministry for Foreign Affairs

Completion date: July 2005

Deposit of instruments of ratification by the Minister for Foreign Affairs at the treaty event to be held during the Eleventh United Nations Congress on Crime Prevention and Criminal Justice, to be held in Bangkok from 18 to 25 April 2005.

Follow-up and possible assistance from UNODC regarding the deposit of the instrument of ratification.

3. Incorporation into law

Pilot authority: Ministry of Justice

Completion date: first trimester 2006

Establishment of a schedule of work: late April 2005

Provision of documents and opinions by the technical ministries within the scheduled time frame;

provision of remote or on-site technical assistance by UNODC at the request of competent national authorities;

meeting of the codification commission or of a group able to give views on the proposals put forward;

delivery of the final document by the pilot ministries to the competent national authorities.

VI. Difficulties, suggestions and prospects

The main difficulty faced by the organizers was undoubtedly the absence of a national allocation to cover the organizational costs. Except for the funding provided UNODC, Burkina Faso was unable to cover its costs.

Moreover, it would be useful to include in the ongoing process certain concerned entities — such as the Ministry for the Promotion of Human Rights and the Institute for Diplomacy and International Affairs of Ouagadougou — that could not officially be invited to the current session for various reasons.

In addition, an improved handling of the implementation process will require the revitalization of the National Codification Commission; implementation of these instruments will entail a review of the Penal Code and the Code of Criminal Procedure.